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5 Attorneys for Defendant  
AMCO INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 CHRISTINE DOUGHERTY, ) CASE NO. C 07-01140 MHP  
12 Plaintiff, )  
13 v. )  
14 )  
15 AMCO INSURANCE COMPANY, and DOES )  
16 ONE through TWENTY, Inclusive, )  
17 Defendant. )  
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18       Defendant AMCO Insurance Company (“AMCO”), by and through its attorneys, hereby  
19 requests that the Court take judicial notice pursuant to Federal Rule of Evidence 201 of the  
20 following:

21       1. That on January 24, 2007, Plaintiff Christine Dougherty filed the complaint in this  
22 action in the Superior Court of the State of California, County of San Francisco, a true and correct  
23 copy of which is attached hereto as **Exhibit U**. (The case was later removed to federal court.)

24 | Dated: June 22, 2007

# LEWIS BRISBOIS BISGAARD & SMITH LLP

By

Julian J. Pardini  
Stephen J. Liberatore  
Attorneys for Defendant  
AMCO Insurance Company

# **EXHIBIT “U”**

1 LAW OFFICES OF STEPHEN M. MURPHY  
2 STEPHEN M. MURPHY (SBN # 103768)  
3 180 Montgomery Street, Suite 940  
4 San Francisco, CA 94104  
5 Tel: (415) 986-1338  
6 Fax: (415) 986-1231

ENDORSED  
**FILED**

*San Francisco County Superior Court*

7 LAW OFFICES OF DAVID M. PORTER  
8 DAVID M. PORTER (SBN # 124500)  
9 101 California Street, Suite 2050  
10 San Francisco, CA 94111  
11 Tel: (415) 982-8600  
12 Fax: (415) 391-9515

CASE MANAGEMENT CONFERENCE SET

BY: PARAM NATT

Deputy Clerk

JAN 24 2007

**GORDON PARK-LI, Clerk**

13 Attorneys for Plaintiff  
14 Christine Dougherty

JUN 29 2007 -9<sup>AM</sup>

15 DEPARTMENT 212

16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18

COUNTY OF SAN FRANCISCO

19

CHRISTINE DOUGHERTY,

NO. CGC-07-459877

20

Plaintiff,

**COMPLAINT FOR DAMAGES**  
(Insurance Bad Faith)

21

v.

22

AMCO INSURANCE COMPANY  
and DOES ONE through  
TWENTY, Inclusive,

**JURY TRIAL DEMANDED**

23

Defendants.

24

Plaintiff CHRISTINE DOUGHERTY alleges:

25

1. Defendants DOES ONE through TWENTY are sued herein under  
fictitious names; plaintiff does not at this time know the true names or  
capacities of said defendants, but prays that the same may be inserted

26

1 herein when ascertained.

2       2. Plaintiff is informed and believes, and thereon alleges, that each of  
3 the fictitiously-named defendants is responsible in some manner for the  
4 occurrences herein alleged, and that plaintiff's damages as herein alleged  
5 were proximately caused by their conduct.

6       3. Plaintiff is informed and believes and thereon alleges that at all  
7 relevant times defendants AMCO INSURANCE COMPANY and DOES ONE  
8 through TEN were corporations doing the business of insurance in California.

9       4. In or about October of 2000, defendants issued an automobile  
10 insurance policy to plaintiff under her married name of Christine D.  
11 Rayburn, Policy Number PPA 0008899321-1 (hereinafter, the "POLICY"). A  
12 copy of said POLICY is attached hereto and incorporated herein as Exhibit 1.  
13 Plaintiff was a named insured under the POLICY, which was in effect at all  
14 relevant times, and in particular on April 17, 2001 when a vehicle driven by  
15 an underinsured driver negligently collided with Plaintiff's vehicle, causing  
16 her to suffer severe bodily injuries.

17       5. Under the terms of the POLICY, plaintiff was obligated to pay  
18 premiums to keep the POLICY in effect. Under the terms of the POLICY,  
19 defendants agreed to provide insurance coverage against all of plaintiff's  
20 losses from covered occurrences, including Underinsured Motorist coverage  
21 in amounts up to \$100,000 per person.

22       6. In the POLICY, and prior to its inception, defendants represented to  
23 plaintiff that they would, in the event plaintiff suffered bodily injuries from a  
24 covered accident with an uninsured driver, compensate plaintiff for such  
25 injuries under the Underinsured Motorist coverage.

26       7. Throughout the period of POLICY and its renewals, plaintiff

1 promptly paid premiums and performed each act required on her part to  
2 keep the POLICY in full force and effect. Plaintiff intended and expected  
3 thereby to be assured of peace of mind and financial economic security in  
4 the event of an automobile accident, and in particular, in the event of an  
5 accident for which an underinsured or unknown driver was at fault.

6       8. On or about April 17, 2001, plaintiff was driving her vehicle on  
7 San Marin Drive at the intersection of Simmons Lane in Novato, California  
8 when her car was struck by an underinsured motorist.

9       9. Plaintiff was injured in the collision and has been treated for  
10 various medical problems caused by to the incident.

11      10. Shortly after the accident, plaintiff reported the accident to the  
12 defendants, and after settlement with the underinsured motorist, made a  
13 claim under the Underinsured Motorist provision of the POLICY on or about  
14 January 6, 2003. Defendants handled and made decisions on plaintiff's  
15 claim beginning in January 2003 until the arbitration hearing over three  
16 years later, on January 26, 2006.

17      11. The defendants acknowledged that plaintiff was injured in the  
18 subject incident.

19      12. Despite the fact that liability under the Underinsured Motorist  
20 coverage portion of the POLICY was clear, and despite the fact that  
21 defendants acknowledged that plaintiff had been injured in the subject  
22 accident, at no time before the arbitration hearing did defendants make a  
23 payment to plaintiff under the Underinsured Motorist coverage portion of  
24 the POLICY.

25      13. In response to defendants' request, in January 2003 plaintiff's  
26 counsel provided defendants with copies of documentation regarding

1 plaintiff's underlying claim against the underinsured motorist. In October  
2 2004, approximately three and one half years after the accident, plaintiff's  
3 counsel demanded arbitration under the Underinsured Motorist coverage  
4 portion of the POLICY, not having received any payment from defendants  
5 under that coverage. Despite several settlement demands by plaintiff's  
6 counsel, defendants refused to make any settlement offer and forced  
7 plaintiff to arbitrate her underinsured motorist claim.

8       14. The arbitration took place on January 26, 2006 before the  
9 Honorable Alfred Chiantelli (retired). On March 1, 2006, the arbitrator  
10 issued a ruling awarding plaintiff damages in the amount of \$107,874,  
11 including an offset of \$35,000 for the payment by the underinsured  
12 motorist, leaving a net recovery to plaintiff of \$72,874. On November 8,  
13 2006, the Superior Court of the State of California, County of San Francisco,  
14 confirmed the arbitration award and on November 28, 2006 entered  
15 judgment in favor of plaintiff and against defendant for \$72,874 together  
16 with costs of suit. Defendant has satisfied the judgment except for payment  
17 of the costs of suit.

18        15. By failing and refusing to pay benefits under these provisions of  
19 POLICY as required and by forcing plaintiff to arbitrate her underinsured  
20 motorist claim, defendants have acted in bad faith and breached their  
21 contractual obligations to plaintiff.

**FIRST CAUSE OF ACTION**  
(Breach of Contract)

23       16. Plaintiff realleges and incorporates by reference the allegations  
24 of Paragraphs 1 through 15 above.

17. Plaintiff and defendants entered into a written contract of

1 insurance which provided underinsured motorist coverage. Plaintiff was  
2 involved in an accident with an underinsured motorist.

3       18. Plaintiff made claims under her underinsured motorist coverage.  
4 At all times, plaintiff met all of her obligations under the insurance contract.

5        19. Defendants breached the contract of insurance by the way in  
6 which they handled, and mishandled, plaintiff's claims for underinsured  
7 motorist benefits. They did not pay promptly and/or handle the claim fairly.

8        20. As a direct result of defendants' breaches of the insurance  
9 contract, including the implied covenant of good faith and fair dealing,  
10 plaintiff suffered damages including, but not limited to increased litigation  
11 expenses, increased personal expenses, loss of interest, increased attorneys  
12 fees, emotional distress, other financial losses, and other general and  
13 special damages.

**SECOND CAUSE OF ACTION**  
(Breach of Covenant of  
Good Faith and Fair Dealing)

16        21. Plaintiff realleges and incorporates by reference the allegations  
17 of Paragraphs 1 through 20 above.

18        22. At all relevant times, defendants agreed to act in good faith and  
19 deal fairly with plaintiff when they entered into the POLICY and accepted  
20 premiums from plaintiff. Defendants thereby assumed quasi-fiduciary  
21 obligations to plaintiff and agreed to abide by such duties. Nevertheless,  
22 defendants refused and failed to act in good faith and deal fairly with  
23 plaintiff and breached said quasi-fiduciary obligations, as is set forth more  
24 particularly herein.

25        23. In the absence of a reasonable basis for doing so, and with full  
26 knowledge and/or reckless disregard of the consequences, defendants have

1 failed and refused to indemnify plaintiff under POLICY and the laws of  
2 California, despite defendants' knowledge of facts mandating payment, until  
3 plaintiff obtained an arbitration award.

4 24. Defendants engaged in a course of conduct to further their own  
5 economic interests and in violation of their contractual and fiduciary  
6 obligations to plaintiff including but not limited to:

- 7 a. misrepresentation of pertinent policy provisions and coverages  
8 at issue;
- 9 b. unreasonable delays in acting upon plaintiff's claim;
- 10 c. unreasonable and improper investigation and/or handling of  
11 plaintiff's claim;
- 12 d. denying coverage for certain losses when the facts and POLICY  
13 provisions warranted payment;
- 14 e. in the above and other conduct, violation of the California  
15 Insurance Code;
- 16 f. failing and refusing to make payment to plaintiff (or even an  
17 offer) when liability under the policy was clear; and
- 18 g. other wrongful and illegal conduct.

19 25. On information and belief, this conduct was part of a larger  
20 pattern of conduct involving the issuance of similar policies and/or claims of  
21 other similarly situated insureds throughout California within the past  
22 several years and up to the present. In pursuing this wrongful course of  
23 conduct herein, defendants were pursuing unfair trade practices.

24 26. The above course of conduct was pursued without due regard  
25 for and in reckless and conscious disregard of the medical, physical,  
26 emotional and financial circumstances of and potentially adverse

1 consequences to plaintiff.

2       27. Defendants pursued this course of despicable conduct  
3 intentionally, maliciously, in conscious disregard of the rights of plaintiff,  
4 fraudulently, and/or with reckless disregard of the likelihood of causing  
5 plaintiff extreme detriment to its business, and in furtherance of defendants'  
6 own economic interests at the expense of plaintiff economic interests and  
7 well-being.

8       28. As a proximate result of defendants' conduct, plaintiff has  
9 suffered and continues to suffer humiliation, emotional distress, and mental  
10 anguish, all to her damage in a sum according to proof.

11       29. As a further direct and proximate result of the conduct of  
12 defendants, plaintiff has incurred and will incur economic detriment  
13 including but not limited to lost interest and/or interest incurred on moneys  
14 borrowed and other special damages in an amount not yet determined.

15       30. Plaintiff has incurred and continues to incur legal expenses and  
16 attorneys' fees. Plaintiff is presently unaware of the precise amount of such  
17 expenses and fees, and prays leave of court to amend this complaint when  
18 those amounts are more fully known.

19       31. Defendants committed the acts alleged herein maliciously,  
20 fraudulently, and oppressively, with the wrongful intention of injuring  
21 plaintiff, and acted with an improper and evil motive amounting to malice  
22 and in conscious disregard of plaintiff's rights. Because the acts taken  
23 towards plaintiff were carried out by defendants acting in a despicable,  
24 deliberate, cold, callous, and intentional manner in order to injure and  
25 damage plaintiff, she is entitled to recover punitive damages in an amount  
26 according to proof.

1 WHEREFORE, PLAINTIFF prays judgment against defendants, and  
2 each of them, as follows:

3 1. For general damages for emotional distress, humiliation, and  
4 mental anguish according to proof.

5 2. For lost interest and/or interest incurred on moneys borrowed,  
6 increased litigation expenses, increased personal expenses, increased  
7 attorneys fees, other financial losses according to proof;

8 3. For exemplary (punitive) damages according to proof;

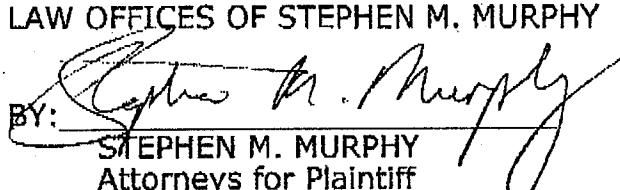
9 4. For reasonable attorneys' fees and costs and expenses of  
10 litigation;

11 5. For prejudgment interest; and,

12 6. For such other and further relief as the court may deem just and  
13 proper.

14 DATED: January 24, 2007

LAW OFFICES OF STEPHEN M. MURPHY

15 BY: 

16 STEPHEN M. MURPHY  
17 Attorneys for Plaintiff

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